



WELFARE RIGHTS & ADVOCACY SERVICE

Debts – what to do if you have a Centrelink debt

This factsheet explains what you can do if Centrelink decides that you have been overpaid a social security (Centrelink) payment and you have a debt to the Commonwealth. There are different rules about debts raised by the Family Assistance Office (FAO) in regard to Family Tax Benefit (FTB) and Child Care Benefit (CCB) payments. For information about those debts see the **Family Tax Benefit and Child Care Benefit Debts factsheet**.

If you think that Centrelink has made an incorrect or unfair decision you have the right to appeal that decision using the Centrelink appeals process. See the **Appealing Centrelink decisions** fact sheet.

Please read this fact sheet **before** you request an appeal relating to a Centrelink debt.

What is a Centrelink debt?

The most common cause of Centrelink debts is where a person has been paid more of a Centrelink payment than they were entitled to (this may not have been their fault). The amount overpaid is a debt owed to the Commonwealth (Centrelink). If you have a debt for another reason you should contact your closest welfare rights centre for more information (contact details are at www.welfarerights.org.au/)

Overpayments can occur for a number of different reasons such as:

- Centrelink made an error in recording information they were given by you; OR
- Centrelink made a mistake in the calculation of your payments; OR
- Centrelink applied the law incorrectly; OR
- You did not give Centrelink correct or complete information about your circumstances within the required time frame.

Where does Centrelink get information from?

You have an obligation to advise Centrelink of changes in your circumstances which will affect your Centrelink payment within 14 days (such as changes in your wages, or becoming partnered with another person). You cannot rely on Centrelink getting this information from the ATO or your employer.

Centrelink also does data matches with other government departments (such as the ATO), and private organisations (such as education institutions, banks, employers) and may investigate further if the information held by those organisations does not match what is on your Centrelink records. Centrelink may also investigate when they get a tip-off from another source, such as a member of the public.

Is the debt amount correct?

Sometimes Centrelink make errors when calculating whether a person has been overpaid. If Centrelink calculated a debt using incorrect information or some other error occurred in the first

calculation and you ask for them to review the decision the recalculation could result in a larger or smaller debt.

It is important to check this before you ask for an appeal. You can seek independent advice from a Welfare Rights Centre (contact details at www.welfarerights.org.au).

You may need to get a copy of your file from Centrelink under Freedom of Information to check the facts relating to the period of the debt before asking for a review. There is currently no limitation period for appealing Centrelink debts.

A 10% penalty may have been added to the debt if the reason for your debt is that you:

- refused or failed to provide information to Centrelink about your income from work; OR
- knowingly or recklessly provided false or misleading information about your income from work.

The 10% penalty cannot be added if you had a “reasonable excuse” for refusing or failing to provide the information.

Please note: The decision to impose the 10% penalty is a separate decision. If you do not agree with the decision to apply the 10% penalty you can appeal that decision using the appeals process.

How does Centrelink collect debts?

Centrelink normally sends a letter asking for repayment of the debt within 28 days. Don't panic. You do not need to repay the entire amount within 28 days. However, you should contact Centrelink before the due date to negotiate repayments at a rate you can afford without incurring hardship. Once you have entered an arrangement to repay at a negotiated amount Centrelink will usually review the arrangement every 3 months.

Centrelink's debt recovery number is **1800 076 072**.

Centrelink may collect debts by taking the following action(s):

- deduct money from your ongoing Social Security payment;
- if you are not getting a social security payment, Centrelink will try to negotiate a repayment arrangement with you and may refer recovery of the debt to a commercial debt collector;
- “garnishee” your wages or bank account. This means that money can be taken from your bank account or wages. Centrelink can also garnishee any tax refund due to you from the ATO; or
- Commence legal action in a civil court. Centrelink will ask the court to make an order about how the debt is to be repaid. This is extremely rare.

Centrelink does not need your permission to start collecting a debt from you. Entering into an arrangement to repay the debt does not prevent you from appealing the debt.

How much can Centrelink take each fortnight from my Centrelink Payments?

If you are getting a social security payment Centrelink normally deducts a standard percentage of your payment each fortnight to recover a debt UNLESS you have made other arrangements with the debt recovery section. At the moment the “standard” rate is 15%. They may deduct a higher percentage from some payments, such as Family Tax Benefit. Centrelink can also recover a debt from any arrears payments you are owed.

If you have other income Centrelink may want to recover more than the standard 15 % of your payment.

Centrelink should consider your overall means to repay a debt before deciding how much you have to repay each fortnight. If you cannot afford the rate of repayment you should contact Centrelink to negotiate a reduced repayment rate.

If your income increases Centrelink will probably want to increase the amount of your repayments.

Could I be prosecuted?

Centrelink can refer a debt to the Commonwealth Director of Public Prosecutions to consider prosecution in the criminal courts if they think that you deliberately or recklessly made false statements OR omitted to provide timely or correct information about your circumstances in order to obtain a payment you were not entitled to.

Any information you provide to Centrelink at the time they are raising the debt, or in the process of appealing a debt, may be added to existing information Centrelink has as evidence in support of prosecution action.

You may get a letter saying that your case is being considered for prosecution. Centrelink may ask you to attend a taped interview or make a statement. You are under no legal obligation to attend this kind of interview or say anything. You should always seek independent legal advice before attending a prosecution interview or making any statement about the debt. Contact your local Welfare Rights Centre (see www.welfarerights.org.au).

For more information on prosecutions, see the factsheet "Prosecution of social security offences".

Do I have to repay the debt?

There are some situations where you may not have to pay a debt back because it should be "written off" or "waived".

Centrelink will probably want you to start repaying the debt even if you are asking for a review of the debt or whether or not you should have to pay it back. If your appeal is successful and the debt disappears or is reduced then Centrelink will refund any money they have over recovered from you.

Can the debt be written-off?

When Centrelink writes-off a debt, it does not disappear it simply means that you do not have to make repayments for an indefinite or specific period. The decision to write-off a debt can be reviewed by Centrelink at any time.

There are only limited grounds to have a debt written-off. The most common grounds for write-off are:

- you cannot repay the debt. If you are receiving a social security payment it is very rare that the debt will be written off. Usually Centrelink will agree to reduce the amount they deduct from your payment to a nominal amount rather than write it off. You will need to show that ANY deductions from your payment would cause you severe financial hardship;

- you are not receiving a social security payment, and it would be too expensive for Centrelink to collect the debt;
- there is no proof the debt exists (eg, the records about your debt have been lost);
- you have been discharged from bankruptcy (subject to some exceptions);
- the person who owes the debt has died and there is no estate; or
- the six year limitation period applies.

If you think your debt falls into one of these categories, you should get further advice from a welfare rights centre or ask Centrelink to write-off the debt. If you do not agree with a decision about write-off you can ask for this decision to be reviewed. See the **Appealing Centrelink decisions** fact sheet.

Can A Debt Be Waived?

Waiver of a debt means that Centrelink foregoes the right to recover the debt, or part of the debt.

All or part of the debt can be waived when it arose solely because of administrative error OR when there are “special circumstances”.

Administrative Error Waiver

Your debt must be waived if it was caused:

- **solely** by Centrelink “**administrative error**”; and
- you received the payments “**in good faith**”; and
- the debt was raised by Centrelink more than six weeks after the commencement of the debt.

When deciding whether you received the payment “in good faith” the question is whether you knew that you were not entitled to the amount you were paid. If you knew or had reason to know that you were not entitled to a payment you received, you cannot be said to have received the payment in good faith. If you suspected that you were not entitled to the payment but “turned a blind eye” you did not receive the payment in good faith.

It is important also to focus on the word “solely” for this ground for waiver. There must be nothing that you did (or omitted to do) which contributed to the overpayment. For example, if you gave Centrelink accurate information about your income and assets when you claimed a payment but they recorded it wrongly and then wrote to you explaining what income, assets etc were taken into account when your rate of payment was calculated and you did not contact them to correct their error then you will have contributed to the overpayment even though it was Centrelink’s error that was the main cause of the overpayment.

“Special circumstances” Waiver

“Special Circumstances” are not defined in the legislation but over the years a raft of case law has emerged from the Federal Court and the Administrative Appeals Tribunal (AAT) decisions which has clarified the nature of “special circumstances”. Financial hardship is not enough by itself to be considered “special circumstances”.

Your situation must be such that it sets you apart from the “average” person on a Centrelink payment. There will usually be more than one aspect of your circumstances which might be considered to contribute to “special circumstances”. Factors which may be considered “special circumstances” include:

- health issues of the person or their family;
- family commitments and personal issues;
- financial hardship; or
- Extraordinary financial obligations.

Sometimes administrative error by Centrelink can be regarded as one component of “special circumstances”.

Waiver of debts on the grounds of special circumstances is not possible if it is established that the debt resulted because you or another person knowingly:

- made a false statement or representation; or
- did not comply with a provision of the Social Security Act (such as changes in your circumstances).

Will Centrelink automatically consider waiver of the debt?

No. Usually you need to ask Centrelink to waive your debt and if they decide not to you can ask for this decision to be reviewed. See the **Appealing Centrelink decisions** fact sheet.

What happens if I become bankrupt?

If you have a Centrelink debt, and then become bankrupt, you do not have to repay the debt during the period of bankruptcy (usually 3 years). Centrelink cannot take deductions from your payments, require payments by instalments, garnishee your bank accounts or take court action to recover the debt during that period.

After bankruptcy, Centrelink can only start to recover a debt in limited circumstances. Whether or not a debt can be recovered after bankruptcy is a complicated issue. If Centrelink try to recover your debt after you are discharged from bankruptcy you should seek legal advice from your local Welfare Rights Centre (www.welfarerights.org.au).

Appeal rights

If you think a Centrelink decision is wrong you have the right to ask for a review - See the **Appealing Centrelink decisions** fact sheet. **Please remember to get advice before appealing a Centrelink debt as there could be unintended adverse consequences as discussed earlier in this fact sheet.**

Please note: This information contains general information only and is accurate at May 2015. It does not constitute legal advice. If you need legal advice about social security entitlements, please contact your local Welfare Rights Centre/Advocate. Welfare Rights Centres are community legal centres, which specialise in social security law, administration and policy. They are entirely independent of Centrelink. All assistance is free. Contact Welfare Rights & Advocacy Service on (08) 93281751 or by email at welfare@wraswa.org.au